

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Comments on Consolidated Appeals by) CC Docket No. 02-6
Connect2 Internet Networks, Inc.)
)
Schools and Libraries Universal Services)
Support Mechanism)

REPLY COMMENTS OF CONNECT2 INTERNET NETWORKS, INC.

Connect2 Internet Networks, Inc. ("Connect2") submits these reply comments in response to the Commission's Public Notice, DA 05-146, released January 21, 2005 ("Public Notice"), which established a consolidated pleading cycle for public comments in response to five separate petitions for review filed by Connect2. The petitions seek Commission review of decisions by the Universal Service Administrative Company ("USAC") dismissing or denying Connect2's appeals of Commitment Adjustment Letters ("CALs") and/or Repayment/Offset Demand Letters ("RODLs") issued by USAC with respect to a total of 23 schools in the New York-New Jersey area. Only a single comment was filed in response to the Public Notice, confirming Connect2's view that the most significant issues raised in its petitions are unique to Connect2. The sole commenter, Greg Weisiger ("Weisiger"), made it very clear that he had no desire to assist Connect2 in its appeals, but nonetheless reluctantly acknowledged that Connect2's appeals have substantive merit.

BACKGROUND

Between December 13 and December 27, 2004, Connect2 filed with the Commission five separate petitions seeking review of USAC decisions that dismissed or

denied Connect2's appeals of CALs or RODLs issued by USAC. The CALs and RODLs at issue sought to adjust funding commitments and/or to recover funds that allegedly were "erroneously disbursed" from the Schools and Libraries Program for equipment and services installed by Connect2 at a total of 23 different schools in the New York-New Jersey area. In the Public Notice, the Commission solicited comment on several issues raised by Connect2 in its petitions, including whether: (a) an earlier criminal prosecution -- in which USAC and the Commission actively participated -- and the plea agreement that was entered into with the United States Department of Justice ("DOJ") in that case, preclude USAC and the Commission from recovering additional funds from Connect2 now; (b) USAC and the Commission denied due process to Connect2 by, among other things, failing to serve it with copies of the audit reports that formed the basis for several of the CALs at issue until after the deadline for filing Connect2's appeals had passed; and (c) Connect2 should be granted a waiver of the deadline for filing appeals of certain CALs that apparently were never served upon Connect2. The deadline for filing comments in response to the Public Notice was February 22, 2005.

Weisiger's comment was the only one filed. Weisiger states that he does "not condone the behavior of Connect2" that led to the criminal proceedings described in Connect2's petitions and that he wishes that the issues presented by Connect2 had been raised by other applicants or vendors "more worthy" of his consideration and assistance. See Weisiger Comments at 2, 6. Nevertheless, Weisiger reluctantly admits that Connect2's appeals were improperly dismissed by USAC on procedural grounds and should be considered by the Commission on the merits.

Argument

I. USAC's Methods for Providing Notice to Vendors Are Deficient.

Numerous appeals filed by Connect2 with USAC were dismissed without substantive consideration because USAC found that the appeals had not been filed within 60 days of the issuance of the CAL and were, therefore, untimely. See, e.g., Consolidated Requests for Review and Petitions for Waiver, filed December 27, 2004.¹ In its petitions to the Commission, Connect2 argued that the deadline for filing appeals should be waived because Connect2: (a) apparently never received certain CALs; and (b) was never provided copies of the audit reports that formed the basis for certain CALs until months after the deadline for appealing the CALs had passed. See, e.g. Nine School Petition at 7-10, 13 n. 9; Eleven School Petition at 8-12. See also Connect2 Request for Review (St. Augustine School) filed December 13, 2004 ("St. Augustine Request") at 8-11 (denial of due process resulting from failure to serve audit results).

In his comments, Weisiger confirms that USAC has a long history of failing to provide proper notice of its actions to applicants and vendors. Specifically, he states that he has "additional evidence that USAC has in the past and continues to improperly serve notice to vendors and applicants." Weisiger Comments at 5. However, he is reluctant to "detail new revelations of USAC shortcomings" with respect to providing notice to potentially affected applicants and vendors where those details might operate "for the benefit of Connect2," and instead states that he "will reserve those

¹ Connect2 filed two separate Consolidated Requests for Review and Petitions for Waiver on December 27, 2004. The first (lead funding request number 383870) involved nine different schools ("Nine School Petition"). The second (lead funding request number 405672) involved eleven different schools ("Eleven School Petition").

[details] for other applicants and vendors more worthy of waiver consideration.” Id. at 5-6.

Despite his obvious animus towards Connect2, Weisiger acknowledges that Connect2’s appeal is not the first “from a party contending that it did not receive a Commitment Adjustment (COMAD) letter.” Id. at 5. He contends that based on the arguments presented by Connect2 “and the documented track record of USAC” in failing to provide notice to other applicants and vendors, “the Commission must conclude USAC did not properly serve Connect2 with the [commitment adjustment] letter.” Id. at 5, 6. Consequently, Weisiger concludes that “waiver of the appeal deadline is warranted and the WCB should consider the Connect2 appeal as presented.” Id. at 6.

In addition to the overall notice and service of process shortcomings of USAC noted by Weisiger, Connect2 presented at least three additional factors that lend support to its claims that USAC failed to provide Connect2 with proper notice of its actions. First, if the CALs were sent, they were sent to the attention of Mr. John Angelides months after he was debarred from the Schools and Libraries Program. See Nine School Petition at 2-3, 9-11; Eleven School Petition at 2-3, 8-10. Second, if they were sent, they were sent to Mr. Angelides at a time when he was undergoing treatments for brain cancer, a fact which USAC and the Commission knew or should have known from the criminal prosecution. Id. Finally, to the best of Connect2’s knowledge, it is undisputed that the audit reports that formed the basis for the CALs at several of the schools at issue were never provided to Connect2 until months after the deadline for appealing the CALs had passed. See Nine School Petition at 13, n. 9; St. Augustine Request at 8-11. These factors, in combination with “the documented track record of

USAC” to which Weisiger has referred, clearly warrant waiver of the filing deadline and full consideration of the merits of Connect2’s appeals.

II. Connect2’s Appeals Present Issues That Are Unique to Connect2.

The fact that only one party filed comments in response to Connect2’s petitions demonstrates that the most significant issues raised in those petitions are unique to Connect2. Among other things, Connect2 has argued that its E-Rate activities were the subject of a criminal prosecution in 2002 and 2003 by DOJ regarding the same schools and activities that are the subject of the CALs and RODLs at issue here. See, e.g., St. Augustine Request at 2-8 and Exhibit 2; Nine School Petition at 2-7, 11-12 and Exhibit 3; Eleven School Petition at 2-8, 12-13 and Exhibit 4. The criminal complaint recited that Connect2’s activities involved “more than \$9 million in E-Rate monies for goods and services that C2I provided to approximately 36 schools” in the New York/New Jersey area and specifically mentions several of the schools at issue in Connect2’s petitions. Id.

Moreover, there is no question that USAC and the Commission actively participated in the criminal prosecution. The criminal Complaint itself recites that USAC attorneys cooperated with DOJ and provided documents and other information in furtherance of the prosecution. See, e.g., Nine School Petition at 3-4 and Exhibit 3. The Commission’s Office of Inspector General (“OIG”) reported to Congress that its auditors provided substantial assistance to DOJ in the criminal investigation and prosecution. Id. at 4, n. 5.

The DOJ prosecution ended in a plea agreement pursuant to which John Angelides, a principal owner and officer of Connect2, pleaded guilty to Count 1 of the Felony Information against him and agreed to the Forfeiture Allegation therein. That

Count states, among other things, that “from July 1998 to the present, Connect2 was the vendor of goods and services for more than 200 schools participating in the E-rate Program” and that Mr. Angelides had devised and carried out a “fraudulent scheme” by which Connect2 obtained E-rate funds to provide goods and services to those schools. The Forfeiture Allegation states that Mr. Angelides shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and other provisions “a sum of money equal to approximately \$290,000...representing the amount of proceeds obtained as a result of the offense.” See Nine School Petition, Exhibit 4 (Felony Information) at 10. The plea agreement states, among other things, that “neither the defendant nor Connect2 Internet Networks, Inc. will be further prosecuted criminally by this Office...for participating, from in or about the Fall of 1999 through in or about October 2002, in a scheme to defraud the Federal Government’s E-Rate school and library funding program through the submission of false, fraudulent and misleading claims and statements, as charged in the Information.” See Eleven School Petition at 5 and Exhibit 6.

In his comments Weisiger states that “if Connect2 paid fines as a result of federal conviction to the U.S. Treasury representing improperly disbursed Universal Service funding, it might be reasonable for Connect2 to conclude that it had satisfied its obligations to both the government and USAC.” Weisiger Comments at 3-4. However, Weisiger “doubt[s] such an agreement was made and [believes] the fines required Mr. Angelides to admit to criminal forfeiture of wrongfully gained wealth.” Id. at 4. However, the plea agreement required Mr. Angelides to admit to the Forfeiture Allegation of the Criminal Information. That allegation clearly states that the forfeiture

was to be paid pursuant to Title 18, United States Code, Section 981(a)(1)(c), the heading of which is "civil forfeitures." Under the circumstances, it was completely reasonable for Mr. Angelides and Connect2 to believe that the plea agreement "fully satisfied all obligations to both the government and USAC" because: (a) USAC and the Commission actively participated in the criminal prosecution; (b) there were no outstanding commitment adjustments or recovery demands from USAC or the Commission at the time the plea agreement was entered into; and (c) the Commission's own rules expressly state that "only the DOJ has authority to compromise, suspend or terminate collection action" on claims "in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation...." Thus, in the plea agreement, the issues concerning Connect2's involvement in the E-Rate program at the subject schools were resolved with the only government entity that had the authority to resolve them at the time.

Conclusion

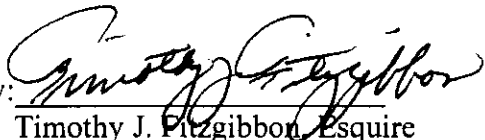
The fact that only one comment was filed in response to the Connect2 petitions demonstrates that the most significant issues raised in those petitions are unique to Connect2. The only commenter in response to the Public Notice concedes that in light of "the documented track record of USAC" in failing to provide appropriate service of CALs and related correspondence to potentially affected parties, the Commission "must conclude [that] USAC did not properly serve Connect2" with the CALs that are the subject of Connect2's petitions and must grant a waiver of the filing deadline and consider the merits of Connect2's appeals. Having participated in the criminal prosecution which eliminated in the plea agreement with Mr. Angelides, USAC and the

Commission cannot now seek payment of additional amounts from Connect2 for the same conduct that was the subject of the criminal prosecution.

Date: March 9, 2005

Respectfully submitted,

CARTER LEDYARD & MILBURN LLP

By: 

Timothy J. Fitzgibbon, Esquire

Jennifer M. Wagman, Esquire

CARTER LEDYARD & MILBURN LLP

1401 Eye Street, N.W., Suite 300

Washington, D.C. 20005

Telephone: (202) 898-1515

Facsimile: (202) 898-1521

Counsel for Connect2

Internet Networks, Inc.

CERTIFICATE OF SERVICE

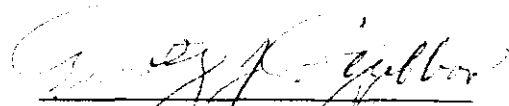
I hereby certify that on March 9, 2005, a copy of the foregoing "Reply Comments of Connect2 Internet Networks, Inc." and certificate of service was sent via First Class Mail, postage prepaid, to:

Administrator
Universal Service Administrative
Company
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, New Jersey 07981

Ms. Narda M. Jones
Chief, Telecommunication Commission
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Anthony Dale
Deputy Chief
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Greg Weisiger
14504 Bent Creek Court
Midlothian, VA 23112


Timothy J. Fitzgibbon